IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: 3.10.2007

1.Kabul Singh ...Appellant

Versus

Gian Chand & others ...Respondents

RSA No.2753 of 1983

2.Kabul Singh ...Appellant

Versus

Gian Chand & others ...Respondents

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

Present: Mr.Kunal Dawar, Advocate for the appellant(s)

Mr.Sapan Dhir, Advocate for the respondent(s)

Permod Kohli, J. (Oral)

This order will dispose of Regular Second Appeal Nos.2752 & 2753 of 1983 as common questions of law are involved in these appeals and the same have arisen out of common judgment and decree dated 27.9.1983 passed by the District Judge, Hoshiarpur in Civil Appeals No.316 and 317 of 9.5.1981.

Briefly stated the facts are that the appellant-Kabul Singh filed a suit being Civil Suit No.97/79 in the Court of Sub Judge Ist Class, Dasuya for permanent prohibitory injunction restraining the defendant/respondent Gian Chand from interfering into the peaceful possession of the two plots of land being Plot No.1 shown as ABOD and Plot No.2 shown as MNOP situated in Village Ahiyapur, Tehsil Dasuya. Boundaries of the plots were also indicated in the plaint. Respondent-Gian Chand also filed a suit in the same Court being Civil Suit No.98/79 seeking a declaration that he is absolute owner in possession of the plots with further relief of permanent injunction. He also sought an alternative decree that in the event of his dispossession, possession of the plots be given to him. This suit was also with respect to the same plots of land. The appellant's suit came to be registered on 12.9.1978whereas the respondent-Gian Chand's suit came to be registered on 11.9.1978. Vide order dated 21.10.1978, both the suits were consolidated by the trial court. Consequently,

the suits were tried together. The trial court framed following issues:-

> "1.Whether Kabul Singh plaintiff is the owner in possession of the suit property? (OPP)
>
> 1-A.Whether Gian Chand defendant is exclusive owner in possession of the suit property? (OPD)
>
> 2.Whether Kabul Singh plaintiff is entitled to the injunction prayed for? OPD)
>
> 2a.Whether defendant Gian Chand is entitled to the injunction as prayed for? (OPD)
>
> 3.Whether the plaintiff is estopped from filing the suit? (OPD)
>
> 4.Relief.

Issues no.1 and 1-A were taken up together for consideration. On the basis of the evidence on record, the trial court decided both these issues. Appellant's claim for title over the property is based upon sale deed dated 8.8.1978 executed by one Gurdeep Singh in their favour and the other sale deed dated 25.8.1973 whereby Gurdeep Singh purchased property from Sant Ram. The trial court considered the entire evidence on record. Respondent-Gian Chand claimed the property in dispute to be his ancestral property. It has been the case of the

respondent-Gian Chand that the property in dispute was owned by his father Moti Ram and it devolved upon by him after his father's death. Respondent also placed reliance upon mortgage deed executed by one Nandu and MST. Hukmi in favour of one Butta Ram son of Arjun Dass. Sant Ram, the original vendor who sold the property to Gurdeep Singh from whom the plaintiff Kabul Singh purchased the property was a marginal witness to the mortgage deed. In the aforesaid mortgage deed, while describing the property, it has been mentioned that on the south side is the house of Moti Ram. Sant Ram appeared in the witness box and proved the sale deed in favour of Gurdeep Singh. He was also confronted with the mortgage deed to which he was a marginal witness. He admitted the boundaries mentioned in the mortgage deed and also stated that the situation at the time of mortgage was the same which continued to be at present. On the basis of these alleged conflicting statements of Sant Ram, the trial court returned a finding that none of the parties has been able to establish their title over the property. Regarding the claim of the appellant herein, the trial court held that since Gurdeep Singh's valid title has not been established, hence the claim of Kabul Singh regarding the ownership of the property cannot be accepted./ Simultaneously, the trial court also held that defendant Gian Chand who is also plaintiff in one of the suits, has also failed to establish his title by any valid documentary evidence. His claim for title on the basis of mortgage deed has also not been accepted. It is relevant to notice that when the suits were

filed, appellant filed an application under Order 39 Rules 1 and 2 seeking ad interim injunction against the respondents and sought permission to raise construction over the suit property. The trial court, by interlocutory order, permitted him to raise construction subject to his filing of undertaking that he will remove the construction in the event the suit filed by Gian Chand is decreed. It is admitted case of the parties that on the strength of the interlocutory order, Kabul Singh has raised construction. The trial court vide its judgment dated 16.1.1981 decreed the suit of the present appellant partly i.e. he was found to be in possession of the property, but his claim for title has not been accepted. The suit filed by Gian Chand was dismissed vide the same judgment by the trial court.

Aggrieved of the judgment and decree of the trial court, only Gian Chand preferred an appeal before the First Appellate Court against the findings recorded against him whereas Kabul Singh chose not to prefer any appeal or even a cross-objection against the judgment of the trial court. The First Appellate Court vide its impugned judgment and decree dated 27.9.1983 has reversed the findings of the trial court and declared the respondent (appellant before the First Appellate Court) as the owner of the land in question applying the principle of "possession follows title", he was declared to be in possession of the suit property. It is this judgment and decree which has been challenged before this Court.

I have heard the learned counsel for the parties and

examined the impugned judgment and decree as also the record. The First Appellate Court has reversed the findings of the trial court on the question of title relying upon the boundaries depicted in the mortgage deed and also the statements of two DWs, namely, DW-3, Ex-President of Municipal Committee, Tanda Urmur and DW-4, Labhu Ram, Member of Municipal Committee, Tanda Urmur. While referring to the statement of Sant Ram in the context of the mortgage deed, the First Appellate Court held that Sant Ram having accepted the position existing on spot at the time of mortgage deed is deemed to have accepted Moti Ram's ownership over the plots. It also held that the statements of the two DWs named above, corroborates Sant Ram's statement and thus, Gian Chand has been declared as the owner of the plots in dispute. It is admitted case of the parties that no documentary evidence whatsoever has been produced by the respondent herein with regard to his ownership over the property in dispute. Property in dispute is situated within Municipal limits, but no revenue record, municipal record or any other title deeds have been produced to show that Moti Ram or his predecessors-in-interest were the owners of the suit property. Respondent also made a claim before the courts below that between the two plots, there is another plot of land which is held by Smt.Sheelo as his licensee, but even Smt. Sheelo has not been produced as a witness to establish any kind of right and title over the property.

I have also examined the original mortgage deed. Neither

Sant Ram nor Moti Ram, father of respondent no.1 were parties to the mortgage deed. Sant Ram has appeared before the registering authority on behalf of the mortgagee. He being neither a party nor a marginal witness to the document, admission regarding title of Moti Ram cannot be attributed to him. The findings of the First Appellate Court regarding title of Moti Ram over the suit property are totally out of context and perverse, hence cannot be accepted. No overt act for exercise of possessory right by respondent Gian Chand has been shown or established. Trial court found that Kabul Singh plaintiff has failed to establish his title, but his possession was prima facie established. No evidence has been produced to show actual physical possession over the suit property by Gian Chand. Even the First Appellate Court has not declared the respondent to be owner in possession of the suit property on the basis of any evidence regarding the actual physical possession. He has been declared in possession by applying the principle of "possession follows title". This principle has no application in the facts and circumstances of the present case. This principle is applicable only where there is open land and nobody is found to be in actual possession of the same as the possession is presumed to be with the owner. The findings of the First Appellate Court on both the counts are not sustainable in law.

For the aforesaid reasons, I allow this appeal and set aside the judgment and decree dated 27.9.1983 passed by the District Judge, Hoshiarpur impugned herein and restore that of the trial

court. Under the facts and circumstances of the present case, no order as to costs.

A copy of this order be placed on the record of RSA No.2753 of 1983.

(PERMOD KOHLI)
JUDGE

3.10.2007
MFK

NOTE:Whether referred to the Reporter or not:NO